

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
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4 DUKE THOMAS NGUYEN,
5 Plaintiff,

6 v.

7 CLARK COUNTY DISTRICT ATTORNEY'S
8 OFFICE et al.,
9 Defendants.

Case No. 2:18-cv-01717-RFB-PAL
ORDER

10
11 **I. DISCUSSION**

12 Plaintiff is an inmate in the custody of the Clark County Detention Center. (See
13 ECF No. 1-1). Plaintiff initiated this case pro se and filed an application to proceed *in*
14 *forma pauperis*. (ECF Nos. 1, 1-1). Plaintiff later acquired counsel. (ECF No. 13). On
15 February 15, 2019, Plaintiff, represented by counsel, filed a first amended civil rights
16 complaint pursuant to 42 U.S.C. § 1983. (ECF No. 19).

17 **A. Filing Fee**

18 28 U.S.C. § 1914 requires that a party instituting any civil action pay a filing fee.
19 However, 28 U.S.C. § 1915 allows for a party to seek leave to proceed *in forma pauperis*.
20 A plaintiff may only proceed *in forma pauperis* if the supporting affidavit demonstrates
21 that the plaintiff lacks sufficient funds to pay court costs and still afford the necessities of
22 life and if the suit is not frivolous or malicious. Escobedo v. Applebees, 787 F.3d 1226,
23 1234 (9th Cir. 2015) (citing Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339
24 (1948)). In light of the change of circumstances since Plaintiff initially sought leave to
25 proceed *in forma pauperis*—including the retention of counsel and the filing of the first
26 amended complaint—the Court defers ruling on the pending application to proceed *in*
27 *forma pauperis*. The Court instructs Plaintiff to, by March 5, 2019, either: (1) file a notice
28 with the Court that he continues to seek *in forma pauperis* status via his pending

1 application despite the representation of counsel; (2) file a new in forma pauperis
2 application; or (3) withdraw the pending application and pay the required filing fees
3 relating to the first amended complaint. The Court, however, denies Plaintiff's request to
4 approve the application to proceed *in forma pauperis* (ECF No. 10).

5 **B. Screening**

6 The general rule under 28 U.S.C. § 1915A is that "[t]he court shall review . . . a
7 complaint in a civil action in which a prisoner seeks redress from the governmental entity
8 or officer or employee of a governmental entity" and "shall identify cognizable claims or
9 dismiss the complaint, or any portion of the complaint" if it is "frivolous, malicious, or fails
10 to state a claim upon which relief can be granted; or . . . seeks monetary relief from a
11 defendant who is immune from such relief." 28 U.S.C. § 1915A(a), (b).

12 Section 1915A does not expressly differentiate between represented and
13 unrepresented prisoner cases with regard to screening, and there is no authority
14 addressing this issue. This Court typically does not screen § 1983 prisoner cases where
15 the Plaintiff is represented by counsel. For one thing, the pleading obligations of an
16 attorney under Fed. R. Civ. P. 11 tend to substantially reduce the incidence of claims that
17 are frivolous or otherwise patently noncognizable on their face. Pro se litigants are not
18 attorneys and should not be expected to know how to draft pleadings as if they were.
19 Judicial screening of prisoner complaints serves to prevent prisoner complaints which are
20 truly difficult, if not impossible to understand, from being served upon defendants.
21 Screening of represented cases to decipher the allegations and claims is usually
22 unnecessary. *See, e.g., Nordstrom v. Ryan*, 762 F.3d 903, 907 n.1 (9th Cir. 2014) (noting
23 that the "purpose of § 1915A is to ensure that the targets of frivolous or malicious suits
24 need not bear the expense of responding"); *O'Neal v. Price*, 531 F.3d 1146, 1153 (9th
25 Cir. 2008) (explaining that the PLRA's screening provision was intended to "conserve
26 judicial resources by authorizing district courts to dismiss nonmeritorious prisoner
27 complaints at an early stage"). As such, the Court will not screen this counseled prisoner
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1 case. This case shall proceed on the normal litigation track as guided by the Federal
2 Rules of Civil Procedure.

3 **II. CONCLUSION**

4 For the foregoing reasons, IT IS ORDERED that the Court defers ruling on the
5 pending application for leave to proceed *in forma pauperis* (ECF No. 1).

6 IT IS FURTHER ORDERED that Plaintiff shall, by no later than March 5, 2019,
7 either:

8 (1) file a notice with the Court that he continues to seek *in forma pauperis*
9 status via his pending application at ECF No. 1 in light of the representation
10 of counsel and filing of the first amended complaint;

11 (2) file a new *in forma pauperis* application; or,

12 (3) withdraw the pending application and pay the required filing fees relating
13 to the first amended complaint.

14 IT IS FURTHER ORDERED that the request for approval (ECF No. 10) is denied.

15 IT IS FURTHER ORDERED that the Court will not issue a screening order in this
16 case.

17 IT IS FURTHER ORDERED that this case shall proceed on the normal litigation
18 track as guided by the Federal Rules of Civil Procedure.

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20 DATED this 26th day of February 2019.

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23 RICHARD F. BOULWARE, II
24 UNITED STATES DISTRICT JUDGE
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